

somebody has stated that. Therefore, those are the issues which are, to my mind, not strictly-speaking within the purview of the Statement which I have made. I am repeating, the objective of my statement is not to malign anybody, not to pass on judgements on anybody. But, as certain facts have come; hon. Members demanded; and I am duty-bound to give the factual position to the hon. Members, I have exactly done that. Nothing more, nothing less than that. Thank you.

**श्री मंगनी लाल मंडल (बिहार):** मैं माननीय मंत्री जी यह जानना चाहता हूँ तथा जिसके बारे में श्री राजीव शुक्ल की भी जिज्ञासा थी कि क्या वही व्यक्ति फूकन है, जो जांच आयोग के चेयरमैन हैं या दूसरा कोई और व्यक्ति है?

**SHRI PRANAB MUKHERJEE:** Sir I have no such information. I think, only my colleague, the Home Minister can, through intelligence agencies, reply this. We don't have any such information.

#### **The Code Of Criminal Procedure (Amendment) Bill, 1994 (Contd.)**

**SHRI SHIVRAJ V. PATIL:** Sir, I would like to thank the hon. Members who participated in this debate and who made very good points.

One of the points was that delays take place in courts, and whether they should take place in the Legislature also in making laws. Sir, this Bill was introduced in 1994 by Shri Shankar Rao Chavan. Then it was referred to the Standing Committee and the Standing Committee gave its report. Later on, the Bill could not be taken up because the House was dissolved; Lok Sabha was dissolved. Then, again, the Bill was introduced, and it was again referred to the Standing Committee. Mr. Pranab Mukherjee was the Chairman of the Committee which looked into the amendments suggested by the Government. He made many, many suggestions, and these suggestions have been accepted by us, and we are trying to incorporate these suggestions in the law, that is, the Criminal Procedure Code. Sir, it is because of this that the delay has taken place. Delays have taken place because the House was dissolved in between; delays have taken place because the matter was referred to the Standing Committee more than once. So, I hope that the hon. Members in the House understand these facts.

Sir, while discussing the amendments to the Criminal Procedure Code, certain suggestions were made with respect to reforms in the Police system. The suggestions made by the hon. Members are very valid. We are looking into those suggestions, but those suggestions do not fit well in the amendments which we have moved here. They have to be looked into from a different angle, in a different forum, and in a different manner. So, my submission in this respect is that Police reforms and the reforms, which we are trying to bring about in the Criminal Procedure Code, are not the same.

Then there were some suggestions made about the delays in courts. There also, it was suggested that delays should be avoided and the judicial system, which we follow in the country, should be reformed. Sir, this suggestion is valid, but it is not valid with respect to amendments to this Bill. Sir, Mr. Nariman suggested that this was not enough and we had to do something more. There were other Members also who suggested this. I fully agree with what they have said. We are not going to stop here or there; we are going to introduce two more amendments to the Criminal Procedure Code. The question, which can be very validly asked, is: Why have you brought this amendment now and why did not you wait? In fact, we waited for this amendment, which was introduced in 1994, up to 2005. When the suggestion was made that the amendments which have been suggested in 2003, and the amendments which could be made after considering the Malimath Committee Report should be brought together, we said, "No, we will not wait. We will push through this amendment. We will see that the Criminal Procedure Code is amended here." Very soon, if possible, in this session itself, we would like to move the Amendment Bill, 2003 also, and we would like to improve the Criminal Procedure Code.

As far as the Malimath Committee Report is concerned, it was suggested by the hon. Chairperson and I had, on that day, also said that the Government was willing to discuss it. The only thing is that the time has to be fixed. It can be discussed at any time. If the time is given for discussing the Malimath Committee Report, the Government will be willing to discuss it. Now there are certain suggestions made by the hon. Members with respect to some points and I will go to these suggestions.

5.00 P.M.

One of the suggestions which was made by Mr. Nariman related to the maintenance that is given. Now, the point is: Why raise the amount from Rs. 500 to Rs. 15000? Now, in this respect, I have to submit, Sir, this was the Bill which was introduced in 1994. Afterwards, section 125 has been amended and they have removed the ceiling which was put over there. Now, it is unlimited. The Judges are given the discretion to give any amount of alimony they want, any amount of maintenance they want. But when this matter went to the Standing Committee, probably the previous Standing Committee, they had thought that Rs. 500 was not enough, so Rs. 1500 should be given. They had suggested that it should be done. But, Sir, I am moving the amendment to that in this Bill and I am not accepting the recommendation given by the Standing Committee and as suggested by hon. Members, I am moving this.

Then, one of the points which was made was a very, very good and intelligent point. And that point related to: Can a person be asked to be a witness against himself? And the Constitutional provisions were referred to this. The hon. Members, who have been very good lawyers and who have been practising, know that with respect to this point, the judgement have been given by the Supreme Court and the Supreme Court, it seems, have distinguished between two things—one being a witness against himself, and then helping the investigating officer to collect some information. Supposing, the investigating officers want to know whether the photograph of the fingerprints is the same as the photograph of the fingerprints of the person who is accused. How should it be done? So, that person can be asked to give the fingerprint and that fingerprint can be compared with the fingerprint which is found at the scene of the offence. So, this is allowed by the courts also and this is not treated as compelling a person to be a witness against himself. This is a very, very good point. I also had a doubt about it in my mind and I am not so sure that the judgements given can really solve this problem. Sometimes, we do get some kind of confusing signals as to what is being 'a witness' and what is 'helping investigation'. But then, as the rulings given by the Supreme Court and because if we don't compel the accused person also to help in investigating, real justice would not be done to him. Supposing, the fingerprint is available and the fingerprint of the accused is not taken, then, it is very difficult for the police officer to compare the two fingerprint, and if the second fingerprint is compared with the first fingerprint, and the police officer comes to the conclusion that the second and the

first do not tally, he can say that I am not going to prosecute. So, he gets the relief also and that is why, we shall have to make some adjustments with respect to this principle and we have to adopt it. Now, there was a suggestion made that why only women should not be arrested after the sunset and before the sunrise. And a suggestion has been made by very senior lawyers and very good parliamentarians that this should be applicable to men also. Well, I am sorry, I am finding it very difficult to accept this suggestion. Now, this provision is made because the women should not be ill-treated in the process of getting arrested or when they are put in the jail. But the same way not be applicable to men also. Sometimes, the investigating officers find it very difficult to trace out the persons who are responsible for that. Suppose, the occasion comes and if it is night time, and if they are not arresting them, they can abscond and it becomes very difficult. On this point, I shall have to submit that I am not in a position to accept it.

As far as the question of senior citizens is concerned, well, when we say the senior citizens, juveniles, and things like that, it becomes unlimited. Now, we have restricted this provision only to women, and let it remain restricted for women, let us not expand it too much. Otherwise, it will create difficulties in investigation and in controlling the crimes also.

Now, there was a question about anticipatory bail. I am finding it very difficult to accept the argument given by my learned lawyer friend on this point. Now, the principle of anticipatory bail was not there in the Criminal Procedure Code. Now, we are making it a part of the Criminal Procedure Code. It was judges who used their discretion to give anticipatory bail. Now, we are seeing in which cases anticipatory bail can be given. Now, there are two things which have to be achieved. One, innocent person should go scot-free, and the second objective which has to be achieved, is to see that a person who is guilty, should not be allowed to go scot-free. Now, if the application is made to court, asking for the anticipatory bail, the applicant has to prove that the case is filed against him to malign him, to bring bad name to him, and he is not a person who is involved in that case. Now, he has to prove that. But supposing, otherwise is proved, so, he should not remain absent also. That is why, in their wisdom, the jurists and the commissions have suggested, and the Standing Committee has also accepted that when the application for anticipatory bail is made, he should be present in the court. If he is innocent, if he feels that he is in

a position to convince the judge that some false cases are being filed against him and he is being falsely prosecuted, then he should be present there. I don't find any difficulty in that.

Then, I come to the question of release on bail. Today, the position is that a person can be arrested, and when a person is arrested, the bail can be given to him in bailable cases by the police itself. Now, in non-bailable cases, the bail is given by the court, and Justice Krishna Iyer was rightly quoted, who has said: "Bail and not jail should be the principle, and this principle is accepted here also." So, nobody is saying that a person should be kept behind bars unnecessarily. Now, what the Criminal Procedure Code says is that, in bailable cases, bail shall be given by the police. In non-bailable cases, the judges should see that unless it is absolutely necessary, they should not be put behind bars, and my experience shows that the people are not kept behind bars unless they are accused of murder or of a very serious offence in which life imprisonment or the death sentence is awarded, generally, the bail is given. In some exceptional cases, the bail is not given. But even in some exceptional cases, supposing a person is in the jail for a pretty long time, the investigation is not getting completed, and even the courts are also finding it difficult to give him the bail, the person should not suffer, and that is why, the law is suggesting that in such cases, if he has been awarded seven years punishment, and for three-and-a-half years, he has languished in the jail, he should be released on bail. Now, this is made mandatory by the law itself. I do not think that anyone can find fault with this kind of approach. If something more has to be done, we will certainly like to do it. But this is an improvement that we are introducing to make the law more humane, to help the innocent persons to come out of the jail, and I don't think anybody can object to this kind of a thing.

Then it is also that the person can be released, the case can be dropped against him. If a person can be sentenced say, for ten years, and if he has remained in the jail for ten years, and the case has not been decided against him, he could be continued in the jail for more than ten years also, though the sentence could have been only for ten years.

Now, this provision also is amended, and we are suggesting that, if a person is to be sentenced for only ten years, and if he has been in the jail for ten years, after ten years, you just drop the case against him. I don't

think that one can find fault with this kind of provisions. But if something more is required, certainly, we are open to hear the arguments, the justifications and the philosophy, which can be given.

Now, I come to the point relating to the custodial deaths, the rape cases and the disappearance of persons who were in the police custody. Sir, in my opinion, these are the issues which have been taken to the Human Rights Commission, more than once, the custodial deaths, the rapes cases and if a person disappears. This has been considered by the jurists, and also by the lawyers, and the judgments have been there, it seems. The Standing Committee Members have also discussed it, and a salutary provision has been made. If a person dies in police custody, it is not the police who should investigate. It is the Judiciary. The members of the Judiciary or the Judicial Magistrate who should investigate. If a rape has been committed in the police custody, then also the investigation will not be done by the police, but it shall be done by the Judicial Magistrate. Suppose a person has disappeared from the jail. So many cases have appeared in the newspapers, and we have been discussing them. As the person disappears, we do not know where he has gone. And the police is investigating. But the police is not coming to any conclusion as to whether that person is really dead or alive, or whether he has escaped or whether is hiding somewhere. In these kinds of cases also, the Judicial Magistrate is allowed to investigate. I think this is a very salutary provision, and the hon. Members have welcomed it.

It was also suggested by Ambikaji, probably, that if something has been done, that is not enough. But what Ambikaji was suggesting has already been done; it is in the law. What Ambikaji has been suggesting and what another hon. Member has been suggesting here is that if a lady is to be arrested, let her be arrested by a lady police personnel. This has already been provided. It is said that in all cases the lady members of the police are not available, and, sometimes, men are doing it. But that is a physical difficulty; that is not a legal difficulty.

The second point which was made by her related to the in-camera proceedings. The Criminal Procedure Code has been amended, and it is in the law itself, which provides that the cases are not to be heard in-camera, general cases; it has to be open to the public at large. Anybody can come and sit in the court. But in some cases, the discretion is given

to the judges to hear the cases in-camera. In rape cases also, it is specifically provided that they have to be in-camera. So, these provisions have been there.

Now, there were two other points made, and they were very, very relevant points. Sir, while looking into these things, we have to strike a balance. Now, it is said that law is nothing but the balancing of interests of the people in the society or belonging to different sections of the society. There are two objectives that we have to achieve. One objective is that no innocent person should be harassed, should be imprisoned and should be put to any inconvenience. It means the criminal jurisprudence, the criminal law system should be humane. There are two objectives. One is to protect the innocent persons living in the society, and the second objective is to see that those who are committing offences are effectively dealt with. These are the two objectives, Sir, and if we do not balance the interests of these two kinds, we have made a law which would not have really done justice to the people. When we are advocating a case of making the law humane, we can make some suggestion. When we are saying that the laws should be effective, the number of crimes should be reduced and the people who commit the crime should be arrested and punished, we shall have to be very careful in doing that also. If the pendulum swings from one extreme to the other extreme, injustice will be caused and that is exactly what we have to avoid while making the laws through this Legislature. When we do it, it is possible for anybody to stand up and say, "This law is not perfect; it is not good" it is not humane". In some other cases, it is also possible to say, "Look, this law is ineffective and useless. It is not producing results". Those who have to make the law and those who have to enforce that law have to see to it that that law is balanced. This is exactly what is trying to be done. What we have done is to make this law humane, with regard to the treatment given to women in police custody, in cases where deaths take place in police custody and in cases where the persons, who are arrested, disappear from the jail, we have made this law more humane. We have said that women should not be arrested before the sunrise and after the sunset. Some of these things make this law more humane. I am not claiming that by just making these amendments that the entire criminal jurisprudence in India has become

totally humane and there is no scope for improvement. This is not the claim that I am making. What I am saying on the floor of the House, very respectfully, is that we are trying to make it more humane.

The second objective, which has to be achieved, is to see to it that the law remains effective. How are we going to do it? In today's world, we can't depend only on the eyewitness' evidence. Those who practised in the courts and dealt with criminal cases know that it is not always possible to get the witnesses to depose and to get enough evidence to punish a person. Many times the witnesses are afraid to come forward. Many times their memory fails there. Many times they are compelled not to speak of the truth because of the situation in which they live. Therefore, depending on the oral evidence has become very difficult. So, the prosecution is shifting from oral evidence to circumstantial evidence and from circumstantial evidence to technical evidence. Now, this is exactly what we are trying to do by amending this law. We are trying to make use of the new technology that has been developed. We are trying to make use of the medical science, the genetic engineering, the DNA test and things like that. We are shifting from oral evidence to circumstantial evidence and from circumstantial evidence to technical evidence which can really help us in doing justice.

One of the most important things, which was raised here, is about the police. I have to make a very respectful submission in this House. Please don't think that all policemen are bad. We can't make an allegation of that kind. There are black sheep in every section of the society and they should be punished. Suppose we don't realise that they also sacrifice their lives for protecting the lives of other people and they just perform their duty. It is not enough for us. Sixty thousand people have died fighting against terrorists. We can't forget their sacrifice in this land. A man coming from Kerala goes to Manipur or other North-Eastern States and, while protecting the life, property and limbs of the people there, he exposes himself and gets killed. If we don't recognise these things, we will be demoralising the police. Let us praise our Army and our Defence Forces. They are doing very well. But let us not forget that the police is also doing their duty. If there is anyone who has committed a mistake, let us punish



him. But let us not forget to recognise the sacrifices that they have made. They have lost their lives. They have lost their limbs. They have lost their kith and kin. They live in the forest areas. We can't forget it and we shouldn't just say that the police is this, the police is that and they do all that. I am sorry, I have to say these things here. Sir, these are the amendments which we have suggested. Now it is not necessary for me to say anything more than this. These are salutary amendments. But much more is required to be done. If possible, we will come to this House and the other House in this Session with the amendment Bill, 2003.

So far as the Malimath Committee report is concerned, I am ready to discuss it.

SHRIMATI AMBIKA SONI: Sir, I raised a point about carrying *Kirpans*.

SHRI SHIVRAJ V. PATIL: That is also a very relevant point. I was also worried about it. But there is no difficulty. Article 25 of the Constitution is a solution to this problem. If you want, I can read out Article 25 of the Constitution, if it is of any help. The Explanation says, "The wearing or carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion." So far as right to freedom of religion is concerned, Article 25 says that everybody has a right to practise his own religion. Because of this there is not going to be any difficulty.

SHRIMATI AMBIKA SONI: So they will be allowed to carry their *kirpans*!

SHRI SHIVRAJ V. PATIL: Yes, they will be allowed to carry their *Kirpans*. There is one more thing that any other kind of weapon is not allowed. It is not done in that fashion. The District Magistrate has to say that in this position you would not carry a weapon. In that position also, *Kirpan* would be allowed to be carried, but other kind of weapons would not be allowed to be carried. So there is no difficulty so far as this issue is concerned.

**डा० प्रभा ठाकुर :** उपसभापति जी, मेरा सवाल था।

**श्री उपसभापति :** मैं आजमी जी को बुलाया है, आप बाद में पूछ लीजिएगा।

**श्री अबू आसिम आजमी:** (उत्तर प्रदेश): उपसभापति जी, मैं माननीय मंत्री जी से एक छोटा सा

क्लोरिफिकेशन लेना चाहता हूँ कि अगर रात में गिरफ्तारी होती है, तो शिकायत यह आई है कि जब रात में गिरफ्तारी करने जाते हैं, तो पुलिस द्वारा महिलाओं के साथ बड़ी बदतमीजी होती है। क्या ऐसा हो सकता है कि रात की गिरफ्तारी के वक्त इलाके के दो-तीन respected व्यक्तियों को बुलाकर गिरफ्तारी की जाए?

شری ابو عاصم اعظمی "اتر پردیش": آپ سہا پتی جی، میں مانیئے منتری جی سے ایک چھوٹا سا کلیری فیکشن لینا چاہتا ہوں کہ اگر رات میں گرفتاری ہوتی ہے، تو شکایت یہ آئی ہے کہ جب رات میں گرفتاری کرنے جاتے ہیں، تو پولیس کے ذریعے مہیلاؤں کے ساتھ بڑی بدتمیزی ہوتی ہے۔ کیا ایسا ہو سکتا ہے کہ رات کی گرفتاری کے وقت علاقے کے دو تین respected لوگوں کو بلا کر گرفتاری کی جائے؟

**श्री उपसभापति :** इस बिल के द्वारा महिलाओं की रात में गिरफ्तारी बंद हो जाएगी।

**श्री अबू आसिम आजमी:** जब रात में पुरुषों को गिरफ्तार करने के लिए जाते हैं, तो महिलाएं घर में होती हैं और अक्सर उनके साथ दुर्व्यवहार की शिकायत मिलती है।

شری ابو عاصم اعظمی : جب رات میں پروشوں کو گرفتار کرنے کے لئے جاتے ہیں، تو مہیلائیں گھر میں ہوتی ہیں اور اکثر ان کے ساتھ درویشوار کی شکایت ملتی ہے۔

**श्री शिवराज वी० पाटिल:** हमने कानून बनाकर यह तय किया है कि किसी भी महिला को रात में अरेस्ट नहीं किया जाएगा।

**श्री अबू आसिम आजमी:** महिलाओं को नहीं, जब रात में पुरुषों को गिरफ्तार करने के लिए जाते हैं, तो घर में महिलाएं भी होती हैं और पुलिस वालों द्वारा घर में घुसने के बाद उनके साथ बदतमीजियां होती हैं। या क्या ऐसा नहीं हो सकता है कि इलाके के दो-तीन respected व्यक्तियों को वहां बुला लिया जाए और उनके सामने गिरफ्तारी की जाए।

दूसरी चीज मुझे यह कहनी है कि trial period में accused को जेल में भेज दिया जाता है और उसके साथ वही व्यवहार किया जाता है जो convicted आदमी के साथ होती है। यह कोर्ट से special permission लिए बगैर होना चाहिए कि उसे घर का खाना, घर के कपड़े, रोज की मुलाकत की सुविधा होनी चाहिए। आज वकील इतने मंहगे हो गए हैं कि कोर्ट जाने के लिए बहुत खर्चा होता है।

हम लोक पोलिटिकल लाइफ में इन चीजों से गुजरे हुए हैं। मैं माननीय मंत्री जी का ध्यान इस ओर दिलाना चाहता हूँ कि अभी POTA का कानून खत्म हो गया, महाराष्ट्र में POTA लागू नहीं हो

رہا تھا، کیونکہ महाराष्ट्र में NDA की सरकार नहीं थी। दो-दो साल अंदर रहने के बाद लोगों को bail मिल गई है, लेकिन फिर भी महाराष्ट्र की सरकार ने अगली कोर्ट में जाकर उनकी bail को रिजेक्ट करवा दिया है और वे लोग जेल में पड़े हैं। महोदय, इनमें से 99.9 परसेंट बेगुनाह छूटने वाले लोग हैं। इनके जो दो-तीन-चार साल बरबाद हो रहे हैं, इसके लिए कुछ किया जाए कि अगर पुलिस ऐसी कोई ऐक्टिविटी करती है, तो पुलिस पर ऑटोमेटिकली कोई मुकदमा होना चाहिए और उनको इसकी सजा मिलनी चाहिए।

**شری ابو عاصم اعظمی :** مہیلاؤں کو نہیں، جب رات میں پریشوں کو گرفتار کرنے کے لئے جاتے ہیں، تو گھر میں مہیلائیں بھی ہوتی ہیں اور پولیس والوں دوارہ گھر میں گھسنے کے بعد ان کے ساتھ بدتمیزیاں ہوتی ہیں۔ کیا ایسا نہیں ہو سکتا ہے کہ علاقے کے دو تین respected لوگوں کو وہاں بلایا جائے اور ان کے سامنے گرفتاری دی جائے۔

دوسری چیز مجھے یہ کہنی ہے کہ ٹرائل پیریڈ میں ایکویزڈ کو جیل میں بھیج دیا جاتا ہے اور اس کے ساتھ وہی سلوک کیا جاتا ہے جو convicted آدمی کے ساتھ ہوتا ہے۔ یہ کورٹ سے اسپیشل پرمیشن لئے بغیر ہونا چاہئے کہ اسے گھر کا کھانا، گھر کے کپڑے، روز کی ملاقات کی سہولت ہوئی چاہئے۔ آج وکیل اتنے مہنگے ہو گئے ہیں کہ کورٹ جانے کے لئے بہت خرچ ہوتا ہے۔

ہم لوگ پالیٹیکل لائف میں ان چیزوں سے گزرے ہوئے ہیں۔ میں ماننے منتی جی کا دھیان اس طرف دلانا چاہتا ہوں کہ ابھی پوٹا قانون ختم ہو گیا، مہاراشٹر میں پوٹا لاگو نہیں ہو رہا تھا، کیونکہ مہاراشٹر میں NDA کی سرکار نہیں تھی۔ دو دو سال اندر رہنے کے بعد لوگوں کو بیل مل گئی، لیکن پھر بھی مہاراشٹر کی سرکار نے اگلی کورٹ میں جاکر ان کی بیل کو ریجیکٹ کروا دیا ہے اور لوگ جیل میں پڑے ہیں۔ مہودے، ان میں سے 99.9 فیصد بے گناہ چھوٹنے والے لوگ ہیں ان کے جو دو تین چار سال برباد ہو رہے ہیں، اس کے لئے کچھ کیا جائے کہ اگر پولیس ایسی کوئی ایکٹیویٹی کرتی ہے، تو پولیس پر آئو میٹی کلی کوئی مقدمہ ہونا چاہئے اور ان کو اس کی سزا ملنی چاہئے۔

**श्री शिवराज वी० पाटिल:** उपसभापति जी, माननीय सदस्य ने जो सुझाव दिए हैं, इन पर बहुत चर्चा होती है और इनके ऊपर विचार करना चाहिए, लेकिन मैं immediately इन पर respond

नहीं कर सकूंगा, क्योंकि इसके अलग-अलग angles हैं, मैं उनकी advocacy की वजह से एक angle को हाँ कह दूँ, तो दूसरे angle में मुश्किल हो सकती है। इसलिए मैं इन पर immediately response नहीं करूंगा। अगर आपकी तरफ से यह लिखित रूप में आ गया, तो हम इसको दिखवा लेंगे और इसके बारे में सोचेंगे।

**श्री उपसभापति:** डा० प्रभा ठाकुर:

**डा० प्रभा ठाकुर:** महोदय, मैं एक-दो छोटे बिन्दुओं की ओर आपका ध्यान आकर्षित करना चाहूँगी। एक तो यह कि पुलिस कस्टडी में थर्ड डिग्री के इस्तेमाल से पहले, क्योंकि उसे जब तक कोर्ट ने भी अपराधी नहीं माना है, थर्ड डिग्री के इस्तेमाल से पहले कोर्ट से एप्रूवल लेना जरूरी होना चाहिए। क्या आप यह जरूरी समझते हैं कि यह अमेंडमेंट होना चाहिए? दूसरी चीज यह है कि यह लिखा है कि स्त्रियों को सूर्यास्त के बाद या सूर्योदय के पहले विशेष परिस्थिति में ही एरेस्ट किया जा सकता है। क्या इस विशेष परिस्थिति को कानून में और अधिक स्पष्ट किया जाएगा, ताकि विशेष परिस्थिति का बहाना लेकर महिलाओं की गिरफ्तारी के लिए कोई उसका दुरुपयोग नहीं कर सके?

**श्री शिवराज वी० पाटिल:** श्रीमन् इसमें दो प्रोविजन हैं। एक तो यह है कि सूर्यास्त के बाद किसी महिला को गिरफ्तार नहीं किया जाएगा। मगर किसी खास परिस्थिति में अगर यह होना है तो वह उसके ऊपर के अधिकारियों से पूछ कर या बता कर किया जाएगा, यानी एक अधिकारी नहीं करेगा, उसमें दो अधिकारी इंचार्ज होंगे। इसके बाद जो तीसरी बात है, वह यह है कि जो गिरफ्तारी हुई है, उसके बारे में मैजिस्ट्रेट को भी मालूम देनी है यह तीसरा प्रोविजन है। अब इतना करने के बाद भी अगर कहीं गलती हो रही है, तो उस आदमी को सजा दी जा सकती है। आज की हालत में सब चीजों को देख कर, ज्यूरिस्ट से डिसकसन करके, जो जजमेंट आया है, उसको देख कर, स्टैंडिंग कमेटी में जा कर और 10 साल तक इसके ऊपर विचार करके यह आया है। मेरे ख्याल से इसको पास होने दें। बाकी बाद में देखा जाएगा।

**DR. M.S. GILL:** Sir, Mrs. Soni had raised two specific points; one about detenues from Punjab, and maybe elsewhere, who are there in jail for more than even a life sentence. I would like to know whether he would review this and what he would like to do in the new situation of a much more positive law and order situation prevailing in Punjab. Secondly, Punjab still continues to be designated as a disturbed area when perhaps it is the most peaceful State in the country. So, would the hon. Home Minister like to say something on these two points which she raised?

**SHRI SHIVRAJ V. PAUL:** Sir, I have replied to the points which were raised by the hon. lady Member. The law is very clear now. The law says that if a person has been sentenced for a particular period of time, and if he has been in jail for more than half that period, while the investigation is going on, he has to be released on bail. There is no discretion available to the judge now. The second outcome of this Amendment is that if that

person has been in jail for more period than the period for which he can be imprisoned after the conviction, the case against that person has to be dropped. The lady Member was saying, "Now that you have made the law, you please see to it that it is in force quickly without delay." The submission is that once this law is enacted by the Rajya Sabha and the Lok Sabha, and the President puts his signature, this is the law of the land and nobody can go against it. And, supposing, there are persons in Punjab or at any place, who have been in jail for more than half the period or the full period of their conviction, the effect of this law would be felt in that State, and they can be released on bail.

DR. M.S. GILL: What about the disturbed area aspect?

SHRI SHIVRAJ V. PATIL: That is a different issue. I have not purposely replied to that because this is not the forum for that.

**श्री उपसभापति:** आपका क्या क्लैरिफिकेशन हैं?

**मौलाना अबुदुल्लाह खान आज़मी:** महोदय, मैं सिर्फ एक छोटी-सी बात जानना चाहता हूँ, जो पूरी दुनिया में आम हो चुकी है। जो लोग गिरफ्तार कर लिए गए, उनका जुर्म साबित हो गया और मान लीजिए जुर्म साबित होने से पहले 3 साल तक उनको सजा दे दी गई और यह कहा जा रहा है कि अगर 6 साल की सजा है, तो 3 साल का उसमें मुजरा हो जाएगा। यह बहुत अच्छी बात है। सर, मगर वे लोग जो बिना कसूर पकड़े गए और उन्हें 3-4 साल तक जेल में रखा गया, बाद में अदालत के जरिए वे बाइज्जत बरी कर दिए गए, उनकी जिन्दगी का जो नुकसान हो रहा है, उसके लिए सरकार क्या सोच रही है और उसके लिए आपके पास क्या अमेंडमेंट हैं? मेरा बड़ा सीधा-सा सवाल है।

**मौलाना عبید اللہ خان اعظمی "مدھیہ پردیش":** مہودے، میں صرف ایک چھوٹی سی بات جاننا چاہتا ہوں، جو پوری دنیا میں عام ہو چکی ہے۔ جو لوگ گرفتار کر لئے گئے، ان کا جرم ثابت ہو گیا اور مان لیجئے ثابت ہونے سے پہلے تین سال تک ان کو سزا دے دی گئی اور یہ کہا جا رہا ہے کہ اگر چھ سال کی سزا ہے تو تین سال کا اس میں معجزا ہو جائے۔ یہ بہت اچھی بات ہے۔ سر، مگر وہ لوگ جو بنا قصور کے پکڑے گئے اور انہیں تین، چار سال تک جیل میں رکھا گیا، بعد میں عدالت کے ذریعے وہ باعزت بری کر دئے گئے، اس کی زندگی کا جو نقصان پورا ہے، اس کے لئے سرکار کیا سوچ رہی ہے اور اس کے لئے آپ کے پاس کیا امینڈمینٹ ہے؟ میرا بڑا سیدھا سا سوال ہے۔

आपने बहुत-बहुत अच्छा क्वेश्चन किया है। यह सवाल जब-जब हम क्रिमिनल केसेज के बारे में सोचते थे, तब-तब आया है। कुछ केसेज ऐसे हैं कि एक आदमी मर गया, जिसने मारा उसको

[4 May, 2005]

RAJYA SABHA

पकड़ लिया और उसको फांसी दे दी। उसके बाद जिसको मारा गया, वह वापिस आ गया, ऐसे भी कैसे हुआ है। इसलिए यह बार-बार पूछा जा रहा है कि क्या यह न्याय करने का सही तरीका है? इसीलिए एक सुझाव ऐसा भी आ रहा है कि ऐसी हालत में शायद उसकी जिंदगी तो हम से वापिस नहीं दे सकते, कुछ compensation दे सकते हैं या कुछ fund दे सकते हैं। इस पर भी विचार चल रहा है और वह पूरा होने के बाद ही उसके बारे में बता सकूंगा, एकदम से नहीं।

मौलाना अबैदुल्लाह खान आजमी : थैंक्यू सर।

مولانا عبید اللہ خان اعظمی : تمہینک یوسر۔

MR. DEPUTY CHAIRMAN: The question is:—

That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration.

*The motion was adopted.*

MR. DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

*Clauses 2 and 3 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 4, there is one amendment (No. 3) by the hon. Minister.

*CLAUSE 4—Insertion of New Section 25A Directorate of Prosecution* SHRI

SHIVRAJ V. PATIL: Sir, Move:—

3. That at page 2, *after* line 15, the following be *inserted*, namely:—

"(1 A) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court."

*The question was put and the motion was adopted.*

*Clause 4, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 5, there is one amendment (No. 4) by the hon. Minister.

*Clause 5—Amendment of section 29.* SHRI

SHIVRAJ V. PATIL: Sir, I move:—

4. That at page 2, line 41, for the word "twenty-five", the word "ten" be *substituted*.

The question was put and the motion was adopted.

*Clause 5, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 6, there is one amendment (No. 5) by the hon. Minister.

*Clause 6—Amendment of section 45*

SHRI SHIVRAJ V. PATIL: Sir, I move:—

5. That at page 3, lines 1 to 3, *deleted*.

*The question was put and the motion was adopted.*

*Clause 6, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 7, there is one amendment (No. 6) by the hon. Minister.

*Clause 7—Amendment of section 46*

SHRI SHIVRAJ V. PATIL: Sir, I move:—

6. That at page 3, for lines 4 to 20, the following be *substituted*, namely:—

"7. In section 46 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

*The question was put and the motion was adopted.*

*Clause 7, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 8, there is one amendment (No. 7) by the hon. Minister.

*Clause 8—Amendment of section 50A*

7. That at page 3, for lines 23 to 27, the following be *substituted*, namely:—

"50A. (1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of

[4 May, 2005]

RAJYA SABHA

his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

*The question was put and the motion was adopted.*

*Clause 8, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 9, there is one amendment (No. 8) by the hon Minister.

*Clause 9—Amendment of section 53*

SHRI SHIVRAJ V. PATH: Sir, I move:—

8. That at page 3, for lines 30 to 34, the following be *substituted*, namely:—

'(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;'

*The question was put and the motion was adopted.*

*Clause 9, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 10, there are two amendments (Nos. 9 and 10) by the hon. Minister.



*Clause 10—Insertion of new section 53a—Examination of person accused of rape by medical practitioner*

SHRI SHIVRAJ V. PATH: Sir, I move:—

9. That at page 4, line 9, *for* the words "of such a practioner" the words "of such a practioner within the radius of sixteen kilometres from the place where the offence has been committed" be *substituted*.

10. That at page 4, for line 22, the following be *substituted*, namely:—

"(iia) the description of material taken from the person of the accused for DNA profiling, and".

*The questions were put and the motions were adopted.*

*Clause 10, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 11, there is one amendment (No. 11) by the hon. Minister.

*Clause 11—Amendment of section 54*

SHRI SHIVRAJ V. PATIL: Sir, I move:—

11. That at page 4, *for* lines 36 to 39, the following be *substituted*, namely:—

"copy of the report of such examination shall be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person."

*The question was put and the motion was adopted.*

*Clause 11, as amended, was added to the Bill.*

*Clause 12 to 16 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 17, there is one amendment (No. 12) by the hon. Minister.

*Clause 17—Amendment of section 125*

SHRI SHIVRAJ V. PATIL: Sir, I move:—

12. That at page 6, lines 4 to 6 be *deleted*.

*The question was put and the motion was adopted.*

[4 May, 2005]

RAJYA SABHA

*Clause 17, as amended, was added to the Bill.*

*Clause 18 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 19, there are three amendments, Nos. 13, 14 & 15 by the hon. Minister.

*Clause 19—Insertion of new section 160—Medical examination of the victim of rape.*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(13) That at page 6, lines 47 and 48, for the words "forwarded to such registered medical practioner without delay" the words "sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence" be *substituted*.

(14) That at page 7, line 2, for the word "forwarded" the word "sent" be *substituted*.

(15) That at page 7, for lines 8 and 9, the following be *substituted*, namely:—

"(iii) the description of material taken from the person of the woman for DNA profiling;".

*The questions were put and the motions were adopted.*

*Clause 19, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN. In Clause 20, there is one amendment No. 16 by the hon. Minister.

*Clause 20—Amendment of section 173*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(16) That at page 7, lines 30 to 40, be *deleted*.

*The question was put and the motion was adopted.*

*Clause 20, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 21, there is one amendment No. 17 by the hon. Minister.

*Clause 21—Amendment of section 176*

SHRI SHIVRAJ V. PATH: Sir, I move:

(17) That at page 8, line 5, for the words "custody of the police" the words "custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code" *be substituted*.

*The question was put and the motion was adopted.*

*Clause 21, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 22, there is one amendment No. 18 by the hon. Minister.

*Clause 22—Amendment of section 190.*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(18) That at page 8, lines 20 to 26 be *deleted*.

*The question was put and the motion was adopted.*

*Clause 22, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 23, there is one amendment No. 19 by the hon. Minister.

*Clause 23—Amendment of section 197*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(19) That at page 8, lines 27 to 29 be *deleted*.

*The question was put and the motion was adopted.*

*Clause 23, as amended, was added to the Bill.*

*Clauses 24 to 49 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 1, there is amendment No. 2 by the hon. Minister.

*Clause 1 — Short title and commencement*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(2) That at page 1, line 4, for the figure "1994", the figure :2005" be *substituted*.

[4 May, 2005]

RAJYA SABHA

*The question was put and the motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

MR. DEPUTY CHAIRMAN: In the Enacting Formula, there is one amendment No. 1 by the hon. Minister.

*The Enacting Formula*

SHRI SHIVRAJ V. PATIL: Sir, I move:

(1) That at page 1, line 1, for the word "Forty-fifth", the word "Fifty-sixth" be substituted.

*The question was put and the motion was adopted.*

*The Enacting Formula, as amended, was added to the Bill.*

*The Title was added to the Bill.*

SHRI SHIVRAJ V. PATIL: Sir, I move:

That the Bill, as amended, be passed.

*The question was put and the motion was adopted.*

MR. DEPUTY CHAIRMAN. Now, we take up statement regarding the status of implementation of the recommendations contained in the second report of the Parliamentary Standing Committee on Labour on Demands for Grants (2004-05) of the Ministry of Textiles.

#### **STATEMENT BY MINISTER**

##### **Status of Implementation of Recommendations contained in Second Report of Parliamentary Standing Committee on Labour on Demands for Grants (2004-2005) of Ministry of Textiles**

THE MINISTER OF TEXTILES (SHRI SHANKERSINH VAGHELA): Sir, I lay a copy of the above-mentioned statement on the Table of the House.

Text of the Statement is given as under:—

In Pursuance of direction of the Hon'ble Chairman, Rajya Sabha published in Rajya Sabha Parliamentary Bulletin Part—II dated September 28, 2004, I am making this statement on the status of implementation of